



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Ensco Environmental Services, Inc.--Request  
for Reconsideration  
File: B-224266.2  
Date: October 24, 1986

### DIGEST

Request for reconsideration is denied where protester fails to show any error of law or fact in prior decision holding that contracting agency properly rejected protester's bid as nonresponsive since letter of credit protester submitted as bid guarantee was materially deficient because it named the protester's parent company, not the protester, as principal on whose behalf letter of credit was issued.

### DECISION

Ensco Environmental Services, Inc. requests reconsideration of our decision in Ensco Environmental Services, Inc., B-224266, Oct. 9, 1986, 86-2 CPD ¶ \_\_\_\_, dismissing Ensco's protest of the rejection of its low bid under invitation for bids (IFB) No. DACW41-86-B-0121, issued by the Army Corps of Engineers. We deny the request for reconsideration.

The IFB required bidders to submit a bid guarantee. To comply with this requirement, Ensco submitted along with its bid a letter of credit issued by a bank. The letter of credit erroneously designated Ensco's parent company, Environmental Systems Company, not Ensco itself, as the principal on whose behalf the letter of credit was issued.

We held that the Corps properly rejected Ensco's bid as nonresponsive because of this error. We found that naming a principal different from the nominal bidder constituted a material defect in the letter of credit, which is itself a material part of the bid; as a result, the error could not be waived by the contracting officer or corrected after bid opening. A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194; Future Electric Co., B-212938, Feb. 22, 1984, 84-1 CPD ¶ 216.

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In its request for reconsideration, Ensco argues that naming its parent company as the principal was a minor deviation which did not affect the enforceability of the letter of credit. We disagree. A suretyship arises only by the express agreement of the surety to be bound on behalf of the principal if certain conditions are met. S&S Contracting, 63 Comp. Gen. 450 (1984), 84-1 CPD ¶ 670. Here, the letter of credit indicates that the bank as surety has agreed to be bound only on behalf of Ensco's parent company, the named principal; there is no indication on the letter of credit that the bank has agreed to act as surety for Ensco. The key question in determining the sufficiency of a bid guarantee is whether the government will be able to enforce the guarantee if the bidder fails to execute the required contract documents and deliver the required performance and payment bonds. Juanita H. Burns and George M. Sobley, 55 Comp. Gen. 587 (1975), 75-2 CPD ¶ 400. Here, since Ensco is not named as a principal, it is doubtful whether the Corps could enforce the letter of credit if Ensco failed to carry out its obligations under the IFB; as a result, the letter of credit is deficient. S&S Contracting, 63 Comp. Gen. at 452.

Ensco contends that the fact that its parent company is named as principal in the letter of credit indicates that the parent has committed itself to act as guarantor for Ensco. We find this argument to be without merit since the letter of credit has no indication that the parent is acting on Ensco's behalf and, in fact, lacks any reference at all to Ensco.

Since Ensco has failed to show any error of law or fact in our original decision, the request for reconsideration is denied.

*for Seymour Gross*  
Harry R. Van Cleve  
General Counsel